

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OBIE CALVIN HUGHES,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 246895

Wayne Circuit Court

LC No. 02-006118

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of assault with intent to do great bodily harm less than murder, MCL 750.84, entered after a jury trial, and the prison sentences imposed on his convictions of assault with intent to do great bodily harm less than murder and discharge of a firearm at a building, MCL 750.234b. We affirm defendant's conviction of assault with intent to do great bodily harm less than murder, but vacate his sentences for that conviction and the convictions of discharge of a firearm at a building, and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant attempted to strike complainant in the head with a glass bottle, but was stopped from doing so by complainant and others. Subsequently, defendant fired shots into complainant's home. The jury convicted defendant of assault with intent to do great bodily harm less than murder, two counts of discharge of a firearm at a building, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of nine months to ten years and nine months to four years for assault with intent to do great bodily harm less than murder and discharge of a firearm at a building, respectively, and to a consecutive two-year term for felony-firearm.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do bodily harm to another, i.e., an assault; and (2) an

intent to do great bodily harm less than murder. Assault with intent to do great bodily harm less than murder is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The requisite intent can be inferred from the surrounding facts and circumstances. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). Minimal circumstantial evidence is sufficient to prove intent. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

Defendant argues that the evidence was insufficient to support his conviction of assault with intent to do great bodily harm less than murder.¹ We disagree and affirm that conviction. Defendant committed an assault when he attempted to swing a glass bottle at complainant's head. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). An actual injury is not required to establish the elements of assault with intent to do great bodily harm less than murder. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992). The evidence that defendant attempted to strike complainant in the head with a glass bottle supported an inference that defendant had the requisite intent to do great bodily harm less than murder. *Beaudin, supra*; *Strong, supra*. Sufficient evidence supported defendant's conviction. *Wolfe, supra*.

Under the statutory sentencing guidelines, if the upper limit of the recommended minimum term range is eighteen months or less, the trial court must impose an intermediate sanction unless it states on the record that a substantial and compelling reason exists to commit the defendant to the jurisdiction of the Department of Corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the guidelines range or twelve months, whichever is less, MCL 769.34(4)(a), but cannot include a prison term. MCL 769.31(b); *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002). A substantial and compelling reason for departing from the guidelines must be objective and verifiable, and must irresistibly hold the attention of the court. *People v Babcock*, 469 Mich 247, 257; 666 NW2d 231 (2003).

We vacate defendant's sentences for assault with intent to do great bodily harm less than murder and discharge of a firearm at a building, and remand this matter for resentencing on those convictions. Because defendant's minimum sentence ranges for the convictions of assault with intent to do great bodily harm less than murder and discharge of a firearm at a building did not exceed eighteen months, the trial court was required to impose intermediate sanctions unless it found on the record that substantial and compelling reasons existed to sentence defendant to prison. MCL 769.34(4)(a). The trial court did not impose intermediate sanctions, and stated that it could not find that substantial and compelling reasons existed to exceed the guidelines. Resentencing is required under the circumstances. MCL 769.34(11).

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens

¹ Defendant does not challenge his other convictions.